## UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF WEST VIRGINIA CHARLESTON DIVISION

IN RE ETHICON, INC., PELVIC REPAIR SYSTEM PRODUCTS LIABILITY LITIGATION	: : : :	CIVIL ACTION NO. 2:12-md-02327 MDL No. 2327
This Document Applies To All Actions	:	Judge Joseph R. Goodwin
	X	

## PLAINTIFFS' MOTION FOR A FINDING OF SPOLIATION AND FOR SANCTIONS

COME NOW Plaintiffs to respectfully move the Court for an order finding that

Defendant Ethicon, Inc. ("Ethicon") has spoliated evidence, and issuing severe sanctions against

Ethicon based on its rampant spoliation. As described in detail in the Memorandum in Support

of this motion, Ethicon has lost or destroyed at least tens of thousands, maybe hundreds of
thousands, of documents that likely contain information relevant to Plaintiffs' claims.

WHEREFORE, Plaintiffs respectfully request the following relief from the Court:

- (1) Granting default judgments to Plaintiff Carolyn Lewis, as well as the Plaintiffs in the first TVT-O bellwether trial and the first Prolift bellwether trial:
- (2) Declaring that the Court will issue a spoliation instruction to the jury at every bellwether trial;
- (3) Striking Defendant's learned intermediary defense for every trial;
- (4) Striking any statute-of-limitations defenses for every trial; and
- (5) Charging Plaintiffs' reasonable costs and attorney's fees associated with this motion to Defendant.

Dated: December 2, 2013 Respectfully submitted,

/s/ D. Renee Baggett

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## **CERTIFICATE OF SERVICE**

I hereby certify that I filed the foregoing on December 2, 2013, using the Court's CM-ECF filing system, thereby sending of the filing to all counsel of record for this matter.

/s/ D. Renee Baggett